

KAVANAGH MALONEY & OSNATO LLP  
Attorneys for Defendants  
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New York, N.Y. 10017  
212-207-8400

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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KAT HOUSE PRODUCTIONS, LLC d/b/a SURF  
CHICK, KATHLEEN MERRICK, PATRICIA J.  
WAGNER and AURORA CONTRERAS,

[ECF]

07 CIV 9700(BSJ)(MHD)

Plaintiffs,

-against-

**REPLY AFFIDAVIT  
OF JAMES J. MALONEY**

PAUL, HASTINGS, JANOFSKY & WALKER, LLP,  
REBECCA KELDER MYERS, KATHERINE CHANG  
and CATHERINE M. CLAYTON,

Defendants.

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STATE OF NEW YORK )

:ss:

COUNTY OF NEW YORK)

JAMES J. MALONEY, being duly sworn, deposes and says:

1. I am a member of Kavanagh Maloney & Osnato LLP, counsel for Defendants. I submit this reply affidavit in further support of Defendant Katherine Chang's motion to dismiss this action against her.

2. Plaintiffs attempt to persuade this Court to disregard the decision of United States District Judge George H. King in the California action by arguing that the

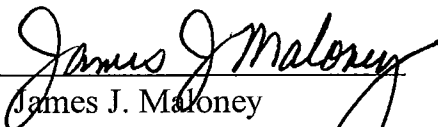
issues before Judge King were different than those before this Court. Affidavit of Brian T. Egan in Opposition to Defendant Chang's Motion to Dismiss sworn to April 23, 2008 ("Egan Aff.") ¶¶4, 8. As demonstrated in the Reply Memorandum of Law submitted herewith, Plaintiffs presented the same arguments to Judge King as they have presented to this Court. We respectfully request that this Court reach the same result as Judge King and find that there is no federal subject matter jurisdiction because Plaintiffs have failed to demonstrate the existence of a substantial disputed issue of federal law.

3. Plaintiffs also incorrectly suggest that Magistrate Judge Michael H. Dolinger ruled on the issue of subject matter jurisdiction by directing the parties to continue with discovery. Egan Aff. ¶¶6 and 7. On January 22, 2008, Magistrate Judge Dolinger held a conference call with counsel for the parties. Defendants requested that discovery be stayed because this Court lacked subject matter jurisdiction. Judge Dolinger denied Defendants' request solely on the ground that however the subject matter jurisdiction issue was resolved, the parties would continue to litigate in some forum to resolve their disputes and the discovery, therefore, would not be wasted. Egan Aff. Ex. C, p.2.

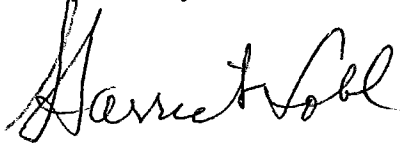
4. On March 24, 2008, Defendants wrote to Magistrate Judge Dolinger requesting that discovery be stayed on the additional ground that our investigation of the case indicated that Plaintiffs' claims are barred by the statute of limitations. Judge Dolinger denied this request by ruling that the application was in the nature of an untimely request for reconsideration. Egan Aff. Ex. E. To our knowledge, none of the motion papers relating to

subject matter jurisdiction have been presented to Judge Dolinger and at no time has he indicated that he has any opinion concerning whether there is federal subject matter jurisdiction in this case.

5. For all of the foregoing reasons, Defendant Chang respectfully requests that this Court grant her motion to dismiss this case for lack of subject matter jurisdiction or, in the alternative, for failure to state a claim for relief against her.

  
James J. Maloney

Sworn to before me this  
1st day of May, 2008



Notary Public

**HARRIET LOBL**  
**Notary Public, State of New York**  
**No. 01L07578060**  
**Qualified in New York County**  
**Commission Expires January 31, 2011**

**AFFIDAVIT OF SERVICE**

STATE OF NEW YORK )

ss.:

COUNTY OF NEW YORK)

The undersigned, being duly sworn, deposes and says:

Deponent is not a party to the action, is over 18 years of age and resides at 113-02 200th Street, St. Albans,, NY.

That on May 2, 2008 deponent served the annexed

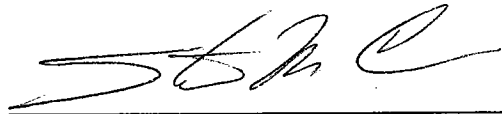
**REPLY AFFIDAVIT OF JAMES J. MALONEY**

**BY MAIL AND ECF FILING**

on

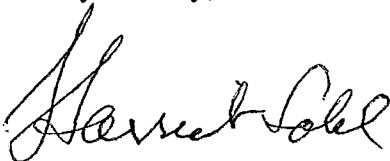
Brian T. Egan, Esq., Egan & Golden, LLP, 475 East Main Street, Suite 114, Patchogue, NY 11772, Attorneys for Plaintiffs

by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within the State of New York.



Steven M. Cordero

Sworn to before me this  
2nd day of May, 2008



Notary Public

**HARRIET LOBL**  
Notary Public, State of New York  
No. 01L07578060  
Qualified in New York County  
Commission Expires January 31, 2011